In The

SUPREME COURT of the UNITED STATES

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORATION, INC.,
a Minnesota Corporation
and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE, a Delaware
Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER,
JOSEPH SWEDA, REBECCA YOUNG,
WAYNE VOLK, LEWIS V. VERSNIK, and
and BRONSON C. LA FOLLETTE,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JURISDICTIONAL STATEMENT

JACK R. DeWITT

JOHN D. VARDA
JON P. AXELROD
JOHN H. LEDERER
ANTHONY R. VARDA

DeWITT, McANDREWS & PORTER, S.C.
121 South Pinckney Street
Madison, Wisconsin 53703

October 15,th 1976

The Gilman Press Inc., Madison, Wisconsin 53703

INDEX

TABLE OF AUTHORITIES

CASES:

STATUTES:

In The

SUPREME COURT of the UNITED STATES

October Term, 1976

No. .....

RAYMOND MOTOR TRANSPORATION, INC.,
a Minnesota Corporation
and

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH SWEDA, REBECCA YOUNG, WAYNE VOLK, LEWIS V. VERSNIK, and and BRONSON C. LA FOLLETTE,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Western District of Wisconsin entered August 13, 1976, denying an injunction against a provision of the Wisconsin Administrative Code which bans 65-foot twin trailer vehicle combinations from conveying general commodity shipments in interstate commerce on Interstate Highways in Wisconsin. Appellants

submit this statement to show that the Supreme Court of the United States has jurisdiction and that a substantial federal question is presented that merits plenary consideration for its resolution.

OPINION BELOW

The memorandum opinion of the District Court for the Western District of Wisconsin is not yet reported. A copy is set forth as Appendix A hereto.

JURISDICTION

This action was brought under 28 U.S.C. §§ 1331, 1332, 1343, 2201 and 2202, and 42 U.S.C. § 1983 to invalidate and enjoin enforcement of a regulation of the State of Wisconsin which bans the use of twin trailer vehicle combinations on Interstate Highways. The state regulation was alleged to violate the Commerce Clause and the Fourteenth Amendment to the United States Constitution.

On August 13, 1976, the three-judge Court granted judgment for the defendants. Notice of Appeal was filed by appellants on September 29, 1976, in the United States District Court for the Western District of Wisconsin. A copy of the Notice of Appeal is set forth in Appendix B.

Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253.[1]

[1] 28 U.S.C. § 2281, which mandated a three-judge court in this case has been repealed, but it does not affect the requirement of direct appeal to the Supreme Court for cases commenced before August 12, 1976, Pub. Law 94-381 (August 12, 1976).

The following cases sustain such jurisdiction: *South Carolina State Highway Dept. v. Barnwell Brothers, Inc.*, 303 U. S. 177 (1938); *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U. S. 361 (1964); *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U. S. 73 (1960); *Herkness v. Irion*, 278 U. S. 92 (1928).

STATUTES AND REGULATIONS INVOLVED

§ Hy 30.14(3)(a), WISCONSIN ADMINISTRATIVE CODE, reads as follows:

> (a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

Other relevant statutes and regulations are set forth in Appendix B.

QUESTIONS PRESENTED

A. Does Wisconsin's refusal to permit twin trailers on the Interstate Highways in Wisconsin violate the Commerce Clause by placing a burden on interstate commerce which outweighs any legitimate local interest?

B. Does the Wisconsin regulatory scheme for vehicles unconstitutionally discriminate against interstate commerce?

STATEMENT OF THE CASE

This suit was brought before the District Court for the Western District of Wisconsin challenging the constitutionality of a Wisconsin Highway Commission regulation insofar as it prohibits the use of 65-foot twin trailer vehicles on the Interstate Highways in the State of Wisconsin.[2] This prohibition causes Wisconsin to be an "island", imposing an artificial and unnatural barrier to twin trailers which are otherwise permitted the length of the principal interstate route from Detroit to Seattle. The barrier thus created disrupts and fragments the national system for the interstate transportation of goods. Carriers,

among other alternatives, are forced to maintain staging areas at the Wisconsin borders for the purpose of dividing twin trailer combinations for transport through Wisconsin as single units and for recombining them at the opposite border. The factual evidence presented to the District Court showed the ban to be unsupported by safety or other legitimate concerns of the State.

By statute and administrative regulation Wisconsin generally prohibits vehicles in excess of 55 feet in length and vehicles having more than one trailer. Under a complex permit system, the Highway Commission, however, can and does, under various grants of power, routinely issue several types of permits for the operation of oversized vehicles up to 85 feet in length and vehicles having more than one trailer. Were it not for § Hy 30.14(3)(a) the Highway Commisison would have the power to grant permits to Plaintiffs for the operation of 65-foot twin trailers and limit such operation to the Interstate Highways.

Plaintiff Consolidated Freightways Corporation of Delaware is a large general commodity carrier, operating in 45 states under authority granted by the Interstate Commerce Commission. Plaintiff Raymond Motor Transporation, Inc. is a small general commodity carrier which has Interstate Commerce Commission authority to pick up and deliver freight in the states of Illinois, Minnesota,

---

[2]The twin trailer vehicle combination at issue here consists of a tractor and two 27-foot trailer units. The first trailer is attached to the tractor in a manner similar to that of a conventional semi-trailer. The front of the second unit rides upon a dolly attached to the rear of the first. The District Court's opinion has appended to it illustrations of the vehicle in question. Such a vehicle is a "trailer-train" or "double bottom" under Wisconsin's definitions.

Because shorter trailers are less stable, 27-foot trailers have become the industry standard. The length of two 27-foot trailer units and a tractor is 65 feet.

and North Dakota. Where permitted, both plaintiffs utilize twin trailer vehicles in their operations. Both plaintiffs applied for permits to operate twin trailers on designated four-lane Interstate Highways in the State of Wisconsin. Both plaintiffs were denied permits on the basis of § Hy 30.14(3)(a) which prohibits the granting of permits for trailer trains except for specified purposes. Plaintiffs thereupon brought suit in District Court to enjoin enforcement of § Hy 30.14(3)(a) as a state regulation violating the Commerce Clause and Fourteenth Amendment of the United States Constitution. This suit is confined to the use of twin trailers on Interstate Highways (and connecting roads) which are principal channels of interstate commerce in and through Wisconsin.[3] A three-judge court was duly impanelled and on August 13, 1976, entered an order refusing to enjoin enforcement of § Hy 30.14(3)(a).[4]

---

[3]The highways in question are Interstate Highways 90, 94 and 894. Interstate 94, in conjunction with Interstate 90, provides a four-lane, limited access highway from Detroit, Michigan to Seattle, Washington. Twin trailers are permitted the length of Interstate 94 save for the segment in Wisconsin. Interstate 894 is an alternate or by-pass route in Milwaukee County, Wisconsin. Both Interstate 90 and 94 run from the southern border of Wisconsin in a generally northwesterly direction to Wisconsin's western border with Minnesota. Plaintiff Consolidated Freightways also requested permits to operate twin trailers on four-lane connecting roads to two Wisconsin terminals immediately adjacent to the Interstate Highways.

[4]By stipulation of the parties, trial in the District Court was upon deposition, affidavits and exhibits. No live testimony was heard by the District Court. The District Court's opinion does not contain detailed findings of fact separate from its conclusions. If this Court deems it necessary it may remand for further specific findings of fact, or may determine the undecided questions itself from the record, *Gerdes v. Lustgarten*, 266 U. S. 321, 327-328 (1924), *McCardle v. Indianapolis Water Co.*, 272 U. S. 400 (1926). Inasmuch as plaintiffs sought injunctive relief, will sustain substantial financial and intangible damage as a result of delay, and inasmuch as the lower court did not rest its decision on the demeanor and credibility of the witnesses, it would be appropriate for this Court to follow the latter course.

The parties have caused their briefs in the District Court to be made a part of the record on appeal. The appendices to Plaintiff's Brief contain a summary of the numerous depositions, affidavits and exhibits on the issues in this case.

This Court has recently enunciated the test to be applied in determining whether a state statute or regulation is violative of the Commerce Clause of the Constitution:

> Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Pike v. Bruce Church*, 397 U. S. 137, 142 (1970).

That test contains two elements: (1) the suspect statute or regulation must be non-discriminatory; (2) the burden on interstate commerce and the state's legitimate local interest must be determined, the two weighed, and the state's interest found dominant. The record below contains extensive testimony and evidence on discrimination, the burden on interstate commerce, and safety—the only local interest the state has raised—all indicating that the Wisconsin regulation is invalid under the *Pike* test.

Interstate general commodity carriage by truck has become the primary method of transporting general commodities in this country. The railroads no longer provide viable less than carload general commodity carriage. General commodity carriage requires that the carrier have the ability to combine small shipments from many shippers for long distance over-the-road shipment and to separate these shipments at a point near their destination for individual delivery to the consignees.

The combination of a tractor and two twin trailers offers advantages peculiar to these requirements of interstate carriage of general commodities. Because the two

trailers may be separated, they may be dropped off, picked up and interchanged individually.[5] That ability permits many improvements in the quality and efficiency of service. Small towns which generate only 15,000 lbs. of freight can have regularly scheduled twin trailer service; 30,000 lbs. are required to provide the same service by semi-trailer. Twin trailer units can be loaded separately, combined at one terminal for over the road movement, and then be separated at another terminal and recombined with other twin trailers going to the same final destination, thereby avoiding expensive and time consuming loading and reloading of cargo.[6] Downtown deliveries and pick ups in congested areas can be made by a single twin trailer and tractor, rather than by loading and unloading cargo in a straight truck for delivery and pick up. Finally, twin trailers offer far greater opportunity for interchanging, thus improving the ability of a carrier to provide service to areas of the country he does not himself serve.

To accomplish the same movements of freight in semi-trailer equipment requires one or more unloadings and reloadings of the cargo. Loading and unloading dramatically increases costs, delays, and exposure of the freight to loss and damage.

A twin trailer vehicle combination has a cubic capacity greater than a common 55-foot semi-trailer vehicle. This added cubic capacity is of particular advantage to

---

[5]"Interchanging" in the terminology of the business is the practice of transferring entire trailers from one carrier to another. "Interlining" is the practice of transferring individual shipments to another carrier for transport in his equipment. In *Bibb v. Navajo Freight Lines*, 359 U. S. 520 (1959), this Court used the term "interlining" where "interchanging" would now be the accepted term.

[6]Actual examples of such movements by twin trailers introduced into evidence are summarized at pp. 56-57; 58-60, of Plaintiffs' Brief in the Court below.

general commodity carriers because the cargo they handle is low density, and becoming less dense with the advent of new light weight packaging materials such as styrofoam.[7] General commodity carriers normally "cube out", i.e., fill the volume of the trailer, long before the vehicle approaches weight limits imposed by the state or federal government. Because of this increased volume, twin trailers further reduce loading and unloading cost, reduce highway traffic, and are more fuel efficient than the 55-foot semitrailer.[8]

The various steps taken by Plaintiff Consolidated Freightways to accommodate Wisconsin's ban of twin trailers illustrate the burden imposed by the ban. Consolidated Freightways maintains staging areas at the Wisconsin borders where twin trailers may be separated, an extra tractor supplied, and the trailers hauled as individual units through Wisconsin to the border where they are recombined. Where this dividing and recombining operation appears inadvisable, Consolidated Freightways operates 55-foot semi-

---

[7]In 1974, the average weight of Plaintiff Consolidated Freightways' shipments was 992 pounds, in the first half of 1975, 975 pounds. Approximately 44% of all shipments weighed less than 200 pounds, and 70.4% less than 500 pounds in 1974. Consolidated Freightways' average loading on a semi-trailer is about 33,112 pounds, on a twin combination, about 36,630 pounds. Both loadings result in a vehicle with a gross weight well under Wisconsin's 73,000 pounds maximum.

[8]The Federal Energy Administration has concluded that twin trailers offer fuel savings of 20% over semi-trailers for the low density loads transported by common carriers of general commodities. In regard to Wisconsin's ban, the FEA stated:

> FEA's analysis shows significant potential for energy conservation through utilization of twin trailer combinations. Motor carriers of general commodity freight would be able to travel across Wisconsin by direct and efficient routings, and integrate and utilize uniform equipment in their operations east and west of Wisconsin. The ability to use twin trailer combinations on interstate routes through Wisconsin will permit motor carriers of interstate and intrastate commerce to utilize the most energy efficient equipment, reduce their costs, and eliminate unnecessary loadings and reloadings at the Wisconsin border. (Hemphill, Affidavit, p. 5)

trailers over an entire route, though twin trailers are legal over all the route save Wisconsin. In some cases to achieve the operating advantages of twin trailers, it will operate twin trailer combinations over circuitous routes through Missouri. Use of these alternatives imposes additional annual operating costs on Plaintiff Consolidated Freightways of more than two million dollars, but more importantly it results in a significant diminuition of the quality and availability of general commodity transportation throughout Consolidated's system.

Additional costs and disruption of the transportation system occur because the tractor equipment for twin trailers is different than that for semi-trailers, chiefly in that a semi tractor has tandem drive axles, whereas a twin tractor has a single drive axle. Although difficult, it is possible for carriers to use semi equipment on a regional basis on the Eastern Seaboard and other adjoining states where twin trailers are not permitted. Wisconsin's geographic location, however, prevents accommodation on a regional basis.[9] The resultant equipment incompatibility is a major problem for carriers, and limits their ability to operate as part of a national or even regional transportation system.

The State of Wisconsin has conceded that twin trailers do not cause increased wear and tear on the highways, and they have conceded that the interstate highway system is structurally adequate for twin trailers; they defend the state ban on twin trailers solely as a safety measure.

---

[9]Twin trailers are permitted in all the states through which the Interstate 90 and 94 route from Detroit to Seattle passes, save for Wisconsin. Interstate 90 and 94 form the principal northern east-west interstate routing. The appendix to Defendant's Brief in the Court below graphically illustrates those states not permitting twin trailers.

The evidence produced at trial on the issue of safety was uncontroverted and showed that there is no legitimate safety interest supporting the ban. All of the numerous expert witnesses who had opinions testified that twin trailers when compared to 55-foot semi-trailers were (1) more maneuverable, (2) remained in their lane better, (3) were more stable, (4) were less prone to jackknifing, (5) stopped as well or better under normal and adverse conditions, (6) produced less splash and spray, (7) were less prone to wind swaying, and (8) were in general as safe or safer. This expert opinion was buttressed by actual experience with twin trailers as reflected in statistical studies conducted by the United States Department of Transportation, Bureau of Motor Carrier Safety, and the California Highway Patrol. Both showed twin trailers to have a lower accident record than 55-foot semi-trailers. State officials who had had experience with twin trailers in their states[10] testified by affidavit that they had experienced no safety hazard with twin trailers. No witness testified to the contrary, and no evidence to the contrary was introduced.

The Wisconsin regulatory scheme generally limits truck combinations to a maximum length of 55 feet, and bans twin trailer type combinations. There are, however, widespread exceptions to this regulation which operate for the benefit of Wisconsin based industries. Twin trailer operations are permitted, for instance, for the transportation of new twin trailers for sale or repair, there being a Wisconsin manufacturer of twin trailers, and for the trans-

---

[10]The states included Michigan, Minnesota, North Dakota, South Dakota, Montana, Wyoming, Idaho, Washington, Oregon, Colorado and Kansas.

portation of milk.[11] Overlength vehicles are specifically permitted in the case of utility pole carriers, mobile homes, implements of husbandry, pulpwood poles, automobile carriers, and vehicles "operating in connection with interplant and from plant to state line operations in this case."[12] The Highway Commission issues both general and special permits, which may be either annual or single trip permits. General annual permits are without limitation as to the number of trips that can be made.

The number of permits granted and the number of trips made under those permits is large. June 1, 1975 figures (which do not include the new dairy exemption and the expanded agricultural implement exemption),

[11]The proposed regulations permitting transport of milk in 55-foot twin tank trailers were brought to the attention of the District Court at trial. The regulations, § Hy 30.18, 30.01(3)(c) and 30.01(3)(c) 2, WIS. ADMIN. CODE, became effective on July 1, 1976. The dairy industry did not need 65-foot vehicles because the volume of a 55-foot twin tank truck permits carriage at the maximum weight allowable.

[12]Appellant takes no exception to pemitted over length uses that are uses of necessity, such as transport of utility poles. However, other permits are issued for economic reasons rather than physical necessity.

The Highway Commission is statutorily banned from granting permits where the load ". . . cannot reasonably be divided or reduced to comply with statutory . . . limitations . . .", WIS. STATS. § 348.25(4) (1973). The Commission candidly admits that it interprets "reasonably divided" in an economic sense; if it is uneconomical to split the load, it is unreasonable. (Huber Deposition, pages 11-12) (Weaver Deposition, pages 12-16) (Volk Deposition, pages 30-32, 35-38) Under this economic reasoning, oversize permits benefiting Wisconsin industries have been granted for physically divisible loads such as empty beer cans, car frames, car underbodies, car bodies, cars, empty twin trailers as a unit, boats, and agricultural equipment.

The record shows that the mobile and modular home industries began manufacturing oversized homes only after state assurances that oversized permits would be available. Thus, these permits are not of necessity.

The exemption for implements of husbandry was recently expanded beyond physical necessity to permit *two* implements to be transported on vehicles 60 feet in length. Thus, J. I. Case Company and Deere & Company, Wisconsin manufacturers of agricultural machinery, may use the exemptions in shipping their products, WIS. STATS. § 348.25(4)(b), (1975); Ch. 66 Laws 1975.

showed a total of 12,168 general permits (Plaintiffs' Request for Admissions). In 1972, there were a total of 20,703 single trip permits (Volk Deposition, Ex. 5). In 1975, 3,077 general permits were for 65-foot automobile transporters (Plaintiffs' Request for Admissions). The heavy usage of such general permits is indicated by the fact that one company with a fleet of only 52 automobile transporters operated 6,376,305 miles in Wisconsin in 1974 (Flippin Affidavit, Ex. JAF-B).

Under the interplant permit section, overlength permits have been granted for shuttle type operations on a continuous daily basis for vehicles carrying automobile frames, the transportation of empty beer cans, and a variety of other cargoes for the benefit of Wisconsin industries.

The District Court found the state's regulatory scheme to be non-discriminatory, apparently on the conclusion that the exemptions on their face are applicable to both residents and non-residents.[13]

[13]In so concluding in regard to interplant permits the District Court went against the clear weight of the evidence. Mr. Robert Weaver, the State Permit Supervisor, testified that interplant permits were an exception to a general policy of granting the same permits to residents and non-residents and were available only to manufacturers having a plant in Wisconsin or their agent motor carrier. (Weaver Deposition pp. 10-11, see also Volk Deposition, pp. 45-46). Defendant's Brief in the Court below conceded that these interplant permits were only available to manufacturers with a plant in Wisconsin. (Defendant's Brief, p. 7)

A SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

Since the inception of this nation there has existed an inherent conflict in our federal system between the power of the states to regulate commerce for the protection and benefit of their citizens and the need for commerce between the states to be free and unhindered. The replacment of the Articles of Confederation with the Constitution was an immediate result of the Country's dissatisfaction with a resolution of that conflict in favor of the individual powers of the states.[14] The Commerce Clause and this Court's interpretation of that clause have attempted to balance the two interests, a balance that found its last expression in this Court's statement in *Pike v. Bruce Church*, 397 U. S. 137, 142 (1970):

> Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

Free and unhindered interstate transportation of goods is the core of interstate commerce. Early in our history before the advent of motor carriage, this Court had construed the Commerce Clause to protect transportation from

---

[14] "The sole purpose for which Virginia initiated the movement which ultimately produced the Constitution was 'to take into consideration the trade of the United States; to examine the relative situations and trade of said States; to consider how for a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony' and for that purpose the General Assembly of Virginia in January of 1786 named commissioners and proposed their meeting with those from other states. Documents, *Formation of the Union*, H. R. Doc. No. 398, 12 H. Docs., 69th Cong., 1st Sess., p. 38." *H. P. Hood & Sons v. DuMond*, 336 U. S. 525, p. 533 (1949); see also, THE FEDERALIST, No. XLII.

burdensome individual regulation by the states, *semble*, *Gibbons v. Ogden*, 9 Wheaton 1 (1824); *semble*, *The Propeller Gennessee Chief v. Fitzhugh*, 12 Howard 443 (1851); *Wabash St. Louis and Pacific Railway Co. v. Illinois*, 118 U. S. 557 (1886).

In 1938, a case arose under the Commerce Clause dealing with state regulation of motor vehicle size, *South Carolina State Highway Department v. Barnwell Bros.*, 303 U. S. 177 (1938). Rather than extending to motor carriage the same protection from burdensome and fragmented regulation provided to inland shipping and railroads under the Commerce Clause, the Court held that the states were free to regulate motor vehicle size so long as such regulation was non-discriminatory. In so doing, the Court rested its conclusions on facts that distinguished motor traffic from rail and water traffic.

In 1938, for all practical purposes, the construction and maintenance of roads, unlike that of waterways and railways, were an exclusive function of the states. The highways constructed in each state varied widely in their number, materials and design. Equally—and the two are intertwined in cause and effect—motor carriage of goods on roads was essentially local transportation; long distance transportation of goods by truck was virtually non-existent.

Moreover, on the facts of *Barnwell*, the danger to the State of South Carolina was immediate and obvious. Appellants in that case desired to place trucks 8 feet wide on highways which were 16 feet wide and incapable of supporting the weight. The Court concluded that motor transportation, unlike other transportation systems, was a matter "admitting of diversity of treatment" according to "the

special requirements of local conditions". There was no need for uniformity of regulation:

> The fact that many states have adopted a different standard is not persuasive. The conditions under which highways must be built in the several states, their construction and the demands made upon them, are not uniform. *South Carolina State Highway Department v. Barnwell Bros., supra*, p. 195.

The Court also believed that it saw a solution to the problem of regulation for local benefit which had inevitably occurred in the past when the states had had unbridled freedom to regulate commerce. If the Court required state regulation to be non-discriminatory, overly burdensome regulations would be politically checked by local interests suffering the same burden:

> The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse. *South Carolina State Highway Department v. Barnwell Bros., supra*, p. 187.

Twenty years later in *Bibb v. Navajo Freight Lines, Inc.*, this Court was presented with a situation where the logical scheme of *Barnwell* was ineffective. Illinois required all truck trailers travelling in Illinois to have a certain type of mudguard. The results of this seemingly innocuous non-discriminatory safety regulation were disruptive out of all proportion to the putative safety interest involved. Interstate carriers of cargo were forced either

to use this mudguard throughout their operations, or to stop at the Illinois border and weld on the mudguard required by Ilinois. Interchanging of trailers, the process of transferring one trailer between different carriers used principally in interstate commerce, was disrupted.

The Court found the Illinois requirement to be unconstitutional. But it did not alter its decision in *Barnwell*, rather it treated the case as an aberration or exception to *Barnwell's* scheme of control:

> This is one of those cases—few in number—where local safety measures that are non-discriminatory place an unconstitutional burden on interstate commerce. *Bibb v. Navajo Freight Lines, Inc.*, 359 U. S. 520, p. 529 (1959).

The circumstances, however, that caused this Court to find the Illinois regulation unconstitutional were not an isolated combination of circumstances unlikely to reoccur, rather they reflected basic changes in transportation. Motor carriage of goods was becoming a major method of long distance transportation. In 1938, South Carolina could regulate trucks in the state with only incidental regulation of interstate traffic. In 1959, the Illinois regulation had substantial effect on interstate carriers. The difference was not in the regulations but in the growth of the transportation system.

Moreover, the political check which the Court relied upon in *Barnwell* failed to operate. It failed, because the regulation, though on its surface non-discriminatory, was one which burdened only interstate carriage of goods without burdening the intrastate carrier. Absent a burden, local interests had no impetus to exert political pressure.

This case presents a similar but more egregious situation than that in *Bibb*. The motor transportation system has increasingly grown and expanded until it is now the principal transportation system for many commodities.[15]

Similarly, the road network has also grown and changed in its character. In 1938, a main trunk highway may have been designed to move produce from farms to their market at the county seat. Today, the Interstate Highways move California oranges to New York City. The Interstate Highways are federally financed, supervised, routed, designed and maintained to provide a national and regional transportation system. They are not less appropriate for state regulation because they are federally financed. They are less appropriate for state regulation because they are a major route of national commerce.[16]

Wisconsin's regulation of the vehicle size and type used by general commodity carriers disrupts and fragments the system because of Wisconsin's location and the routing of principal interstate routes through Wisconsin. Other states ban twin trailers; but these states, with the

[15]In 1972 out of 19 broad commodity groupings, trucks were the predominant transportation means (over 50%) for 16 commodity groupings. Excluding private trucks, for hire motor carriers were predominant in 9 commodity groups (*1972 Census of Transportation*, U. S. Bureau of the Census). On a ton-mile basis, motor carriage has increased from 40,000 million ton-miles in 1938 to 288,519 million ton-miles in 1959 and to 495,000 million ton-miles in 1974. *Fifty-Third, Seventy-Fourth,* and *Eighty-Ninth Annual Report to Congress of the Interstate Commerce Commission* (Government Printing Office, 1939, 1950, 1975).

[16]Plaintiffs' suit is limited to the use of Interstate Highways and connecting routes to adjacent terminals. Plaintiffs have not asserted that the ban is unconstitutional in respect to other highways on which local commerce may predominate. Permitting the use of twin trailers only on Interstate Highways is one of the "reasonable and adequate alternatives" which this Court has required the states to consider before unduly burdening interstate commerce, *Pike v. Bruce Church*, 397 U. S. 137, 142 (1970); *Dean Milk Co. v. Madison*, 340 U. S. 349, 354 (1951).

exception of Iowa,[17] are contiguous and are located in the Southeast or Eastern Seaboard. They can be adjusted to on a regional basis. Wisconsin's geographic location and its location on Interstate 90 and 94 make it an island blocking the commercial routes from the industrial Midwest to the Pacific Northwest.[18] The presence of the Great Lakes and the location of the Interstate Highways prevents any easy routing around Wisconsin. The result is a massive disruption and fragmentation of the system.

Because of Wisconsin's location its ban has extra-territorial effects on commerce traveling principally in states other than Wisconsin. On a small scale, Plaintiff Raymond Transportation is forced to use semi-trailers in Minnesota and Illinois, in order to join these two parts of its operations across the Wisconsin island. On a larger scale, the manufacturer in Detroit shipping to Seattle is forced to pay higher fares, and suffer delays, increased

[17]Iowa, which at the time of the trial did not permit twin trailers over 60 feet in length, has recently enacted administrative regulations permitting the use of 65-foot twin trailers on Iowa's highways. The administrative regulations are currently in abeyance as the result of a court decision holding the regulations to have been improperly promulgated. *Motor Club of Iowa v. Dept. of Transportation* (Dist. Ct., Scott County, Iowa, No. 56948, June 3, 1976).

Iowa's ban has never been the same deleterious effect on interstate commerce that Wisconsin's ban has had. Iowa through traffic can be easily rerouted through Missouri; Wisconsin's traffic cannot because of distance.

Carriers other than plaintiffs have in the past attempted to circumvent the Iowa ban, by paying the fines for oversized vehicles rather than curtailing their usage, e.g., *State ex rel. Turner v. United-Buckingham Freight Lines, Inc.*, 211 N. W. 2d 288 (Iowa 1973) (enjoining defendant motor carrier who had paid over $30,000 in fines from continuing to violate Iowa's length limit).

[18]The industrial states of Ohio, Indiana, Michigan, Illinois, and New York which has east-west twin trailer service through the Province of Ontario, are significantly affected by Wisconsin's ban. In 1972, these five states had manufacturing shipments valued at $250,394,000,000, approximately 33% of all the manufacturing shipments in the nation. (Data extracted from *1972 Census of Manufacturers*, U. S. Census Bureau).

damage to freight, and poorer scheduling because his carrier cannot use twin trailers through Wisconsin. Large carriers such as Consolidated Freightways must attempt to accommodate incompatible equipment throughout their operations. Smaller carriers find their ability to interchange limited because of unsuitable or incompatible equipment. Small towns in states other than Wisconsin, which generate limited freight, find their service less frequent or non-existent because semi-trailers rather than twin trailers must be used.

The political check which this Court saw as a control of the state's regulation of commerce in *Barnwell* fails to function in this case just as it failed to function in *Bibb*. There are three reasons for that failure. First, the advantages that twin trailers offer are advantages that are of principal importance only to the long distance mover of general commodity freight. He is the only carrier who is faced with the problem of collecting freight from dispersed points, combining it with other freight for over-the-road shipment, and delivering it to dispersed points. He is the only carrier that needs the improved interchanging capability of twin trailers. Thus, the Wisconsin ban on twin trailers places a burden on interstate carriers while it does not place a corresponding burden on local carriers.

Nor is that burden on interstate commerce passed through to the local shipper in the form of increased costs. General commodity rates are set by rate conference bureaus which consider costs on a regional basis. Thus, the costs of Wisconsin's ban on twin trailers are spread over several states, and the added costs are paid not by Wisconsin shippers, but by shippers in other states as well. Pressure for political reform is thus attentuated.

Finally, the concept of discrimination applied by the lower court is too narrow. The District Court concluded that the Wisconsin regulatory scheme was non-discriminatory because it applied to both residents and non-residents. Though the Court recognized that the proper test for discrimination under the Commerce Clause comprehended not only the form of the regulation, but the result as well; it looked principally to the form to determine whether discrimination existed:

> After thorough review of the position of each party the Court concludes that there is neither explicit nor implicit discrimination against interstate commerce through the statutory and administrative scheme in question here. No statute or regulation now at issue *expressly* focuses its impact upon interstate trucking operations. In practical effect, it seems apparent that the highways of the state of Wisconsin are controlled without regard to the interstate or intrastate nature of the commerce.
>
> The record in this action does not reveal that by means of these *facially neutral* proscriptions the state of Wisconsin *intentionally* seeks to isolate local industry or agriculture from foreign competition. Opinion p. 7 (emphasis added).

The Court erred on the facts in failing to recognize that interplant permits were openly discriminatory. More importantly it failed to recognize the more subtle discrimination contained in the regulatory scheme.

Where the ban on twin trailers or on 65-foot trucks has placed a burden on Wisconsin industries, an exception has been created for that industry. That exception applies to local and interstate commerce alike, but the criteria for

granting exceptions insures their existence only where the exception is important to Wisconsin commerce. The legislature balances the economic and political importance of an industry with the state's desire in maintaining its ban. The inadvertent result is the discriminatory pattern of exceptions.[19] Where the burden on local interests is great, an exception is created; where the burden is great on interstate commerce, but negligible on local commerce, as is the case with the ban on twin trailers, the legislature has no reason to remove that burden, particularly where the financial cost of the burden is spread over citizens of many states because of the rate structure.

---

[19]That the resultant exemptions are biased is demonstrated by the following table which shows the proportion of Wisconsin's total manufacturing shipments which are produced by the major Wisconsin industries granted or benefiting from exemptions other than interplant permits:

	% of Value of Wisconsin Manufacturing Shipments
Motor vehicles and equipment (65' motor vehicle transporters)	11.13
Mobile homes and Prefabricated Wood Buildings (overlength and overwidth permits)	.60
Dairy Products (55' twin trailer tank trucks for milk, the raw materials in dairy products)	9.88
Paper and allied products (beneficiaries of overlength and overweight permits for pipwood, the raw material in paper manufacture)	9.29
Farm Equipment (exemption for overlength loads of implements)	1.88
TOTAL	32.78

Thus a total of approximately 32% of Wisconsin's manufacturing shipments are possibly benefited by exemptions as to the size or type of vehicles permitted. The Wisconsin "bias" in exemptions can be seen by the fact that nationally these benefited industry groups create only 18% of all manufacturing shipments. (Data extracted from *1972 Census of Manufacturers*, U. S. Census Bureau).

Defendants in their brief conceded that Wisconsin had fashioned its exemptions to benefit industries important to Wisconsin, arguing that the promotion of local industries was a proper exercise of the State's police power (Defendant's Brief pp. 8-10).

The evil is not one of intent, but is inherent in a federal system of government. Wisconsin has acted to further the perceived interests of its citizens, but in doing so it has neglected the interests of the nation in free and unimpeded interstate commerce. The constituency is too small: the viewpoint too narrow.

The factors that make the holding of this Court in *Barnwell* inapposite to the present facts were presented to the District Court. The District Court nominally applied the test of *Pike v. Bruce Church, supra,* to the facts of this case, but it did so in conjunction with this Court's holding in *Barnwell*. The result of such a combination is that the holding of *Pike v. Bruce Church* becomes without force.

Pike requires that the courts, on the facts of each case, weigh the burden on interstate commerce against the local interest. *Barnwell*, however, creates presumptions that when applied in the balancing operation, make it a futile exercise. *Barnwell* and other cases of its era, established the presumption that size is equated with safety, a presumption relied upon by the District Court:

> The United States Supreme Court has on several occasions equated limitations on vehicle size to public safety. The opinions in these cases contain language which is quite broad; they demonstrate that for purposes of judicial review of state highway legislation, size restrictions might be deemed inherently tied to public safety. . . . [citing *Morris v. Duby*, 274 U. S. 135 (1927); *Minnesota Rate Cases*, 230 U. S. 352 (1913); and *Sproles v. Binford*, 286 U. S. 374 (1932).] Opinion, pp. 12-13.

The evidence in this case showed that presumption to be false, nonetheless the District Court considered itself bound by the presumption. Though the District Court spoke of "similar safety considerations" in its opinion, the only safety hazard it mentioned to support the presumption relied upon, was the supposed hazard of passing an additional ten feet of length. The only evidence introduced on the issue was that of expert witnesses who testified that in the context of an Interstate Highway the factor was "not significant." That expert opinion is congruent with common sense; an additional passing delay of a fraction of a second or even a few seconds is "not significant" on a four lane limited access highway, particularly when a twin trailer stays better in its lane and generates less splash and spray than conventional semi-trailers.

Barnwell also emphasized the presumption of validity attached to state statutes and that the matter of safety was essentially one for the state legislatures. Both presumptions influenced the District Court's opinion. Having applied these presumptions rather than the facts presented in evidence, the result of the balancing test was foregone, the District Court saw no necessity to examine or discuss the burden on interstate commerce other than to summarily conclude:[7]

> The burdens thereby imposed upon interstate commerce are not unconstitutional in scope or degree. Opinion p. 12.

In so doing, the District Court failed to apply the warning contained in *Bibb:*

> Appellants did not attempt to rebut the appellee's showing that the statute in question severely bur-

dens interstate commerce. Appellants' showing was aimed at establishing that contour mudguards prevented the throwing of debris into the faces of drivers of passing cars and into the windshields of a following vehicle. They concluded that, because the Illinois statute is a reasonable exercise of the police power, a federal court is precluded from weighing the relative merits of the contour mudguard against any other kind of mudguard and must sustain the validity of the statute notwithstanding the extent of the burden it imposes on interstate commerce. They rely in the main on South Carolina Highway Dept. v. Barnwell Bros., supra. There is language in that opinion which, read in isolation from such later decisons as Southern Pacific Co. v. Arizona, supra, and Morgan v. Virginia, supra, would suggest that no showing of burden on interstate commerce is sufficient to invalidate local safety regulations in absence of some element of discrimination against interstate commerce.

> The various exercises by the States of their police power stand, however, on an equal footing. All are entitled to the same presumption of validity when challenged under the Due Process Clause of the Fourteenth Amendment. . . . Similarly the various state regulatory statutes are of equal dignity when measured against the Commerce Clause. Local regulations which would pass muster under the Due Process Clause might nonetheless fail to survive other challenges to constitutionality that bring the Supremacy Clause into play. Like any local law that conflicts with federal regulatory measures . . . , state regulations than run afoul of the policy of free trade reflected in the Commerce Clause must also bow. *Bibb v. Navajo Freight Lines, Inc.*, 359 U. S. 520, pp. 528, 529 (1959).

Similarly, in the present case, the defendants have been unable to rebut the evidence that shows both a heavy burden on interstate commerce and no legitimate state interest in safety. Instead defendants and the District Court relied upon factual presumptions, which are no longer true and were rebutted, to foreclose a proper weighing of the burden placed on commerce and the state interest served.

The facts of the present case alone demonstrate the need for the Supreme Court to review this case. Wisconsin's ban by and of itself is a major impediment to the national economy because of Wisconsin's strategic location. Of perhaps greater importance is the need for this Court to clarify the applicable law in the area of transportation. The error of the District Court in this case is not attributable to it alone. No legal scholar can clearly find the same underlying rule of decision among the various holdings of this Court in *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177 (1938); *Southern Pacific Co. v. Arizona*, 325 U. S. 761 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U. S. 520 (1959) and *Brotherhood of Locomotive Firemen & Enginemen v. Chicago Rock Island and Pacific Railroad Co.*, 393 U. S. 129 (1968). Conflicting lines of authority have developed and the lower courts are unable to apply a consistent theory of decision.

The danger to the national economy from the confusion is major. As our economy becomes more and more interdependent, the transportation systems that tie together that economy become more important, more complex, and more delicate. Legal confusion in the area of regulation of those transportation systems may well create managerial confusion and impediments to their operation that can have profound effects on the national economy.

For the above reasons, appellants respectfully submit that this Court has jurisdiction of this case and should note probable jurisdiction for the purpose of plenary consideration of the merits of the case.

Respectfully submitted,

JACK R. DeWITT

JOHN D. VARDA
JON P. AXELROD
JOHN H. LEDERER
ANTHONY R. VARDA

DeWITT, McANDREWS
& PORTER, S.C.
121 South Pinckney Street
Madison, Wisconsin 53703
608—255-8891

APPENDIX A

Case No. 75-C-172

(Caption Omitted)

Before: SPRECHER, Circuit Judge; DOYLE, District Judge; and WARREN, District Judge

PER CURIAM

This is an action whereby two corporate plaintiffs challenge certain provisions of the Wisconsin Administrative Code which concern size limitations for trailer-train trucks traveling upon interstate highways in the state of Wisconsin. The plaintiff Raymond Motor Transportation, Inc. is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota; the plaintiff Consolidated Freightways Corporation of Delaware is a Delaware corporation with its principal place of business in Menlo Park, California. The named defendants are various officials of the state of Wisconsin including the State Attorney General, the Secretary of the Department of Transportation, the Chief Traffic Engineer, the commanding officer of the Wisconsin State Patrol, and the chairman and various members of the Wisconsin Highway Commission. Each defendant is sued in his individual and official capacity.

The case presents a cause of action arising under the provisions of 42 U.S.C. § 1983 because it is alleged that the defendants have acted and are acting under color of state statute, regulation and custom to deprive the plaintiffs of rights and privileges secured by the Constitution and laws of the United States. Jurisdiction thus lies pursuent to 28 U.S.C. § 1343.[1] The action is properly before a

---

[1]It would seem apparent that, while both named plaintiffs are corporations, a corporation is a "citizen of the United States or other person" entitled to invoke § 1983. See, e.g., Philadelphia Newspapers, Inc.

three-judge court, convened by the terms of 28 U.S.C. § 2281, because the complaint specifically attacks and seeks interlocutory and permanent injunctive relief against enforcement of a regulation made by a state administrative board or commission acting under state statute, said administrative regulations being § Hy 30.14(3)(a) of the Wisconsin Administrative Code.

On March 18, 1976 the cause came on for hearing before this three-judge panel. The following memorandum and order serves to resolve the merits of this controversy, and constitutes final findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure.[2]

---

v. Borough Council, etc., of the Borough of Swarthmore, 381 F. Supp. 228 (E. D. Pa. 1974), citing at note 2, Adams v. City of Park Ridge, 293 F. 2d 585 (7th Cir. 1961).

The complaint invokes jurisdiction, "pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332, 28 U.S.C. § 1343, 42 U.S.C. § 1983, and 28 U.S.C. § 220102." In view of the finding that jurisdiction exists through 28 U.S.C. § 1343, the Court need not and does not decide whether jurisdiction is either possible or appropriate under the remaining statutory provisions.

[2]The issues in this suit have been fully briefed pursuant to a briefing schedule set prior to hearing. All testimony has been presented by depositions and affidavits. On April 7, 1976 Judge Doyle sent a letter to all counsel to indicate that the members of the three-judge panel had discovered an apparent error in the notice of the March 18 hearing. While the Court had presumed that the hearing presented the case for final adjudication, the notice, dated March 12, 1976, indicated that the hearing was to concern only plaintiffs' motion for a preliminary injunction. Counsel for each party have responded, and indicate that final determination on the merits is indeed appropriate at this time. The Court therefore orders that trial of this action on the merits is hereby consolidated with the hearing on the motion for preliminary injunctive relief, as permitted by Rule 65(a)(2) of the Federal Rules of Civil Procedure. In view of the acquiescence of counsel, there is no impropriety in this procedure. *See generally:* 11 Wright & Miller, Federal Practice and Procedure: Civil § 2950 (1973 ed.).

I.

Each of the named plaintiffs is a commercial interstate motor carrier hold a certificate from the Interstate Commerce Commission. Each is engaged in substantial interstate commerce operations through Wisconsin, and each currently utilizes a variety of types of trailer-truck vehicles, including some currently prohibited by the statutory and administrative policies of the state of Wisconsin because of their length.

Both plaintiffs make rather extensive use of "twin trailer" combinations, articulated vehicles consisting of a truck tractor, a semitrailer, a set of dollies and a second semitrailer; the two freight-carrying vans are each 27 feet in length, for an overall length of 65 feet for the assembled twin-trailer vehicle. Both plaintiffs also make use of more traditional semitrailer vehicles which are not articulated and which are 55 feet in length when assembled. The differences in size as between these two particular types of vehicles are graphically illustrated at Appendix A.

By statute and administrative regulation, the state of Wisconsin limits the length of most trailer-train vehicle combinations to 55 feet. This limitation is attacked in this suit; counsel for the plaintiffs allege that to so limit vehicle length precludes general commercial operation of twin trailer combinations in Wisconsin and, therefore, constitues a direct or indirect discrimination against interstate commerce and an unlawful burden on interstate commerce in violation of Art. I Sec. 8 of the United States Constitution, as well as a breach of equal protection of the law as guaranteed by the fourteenth amendment to the United States Constitution. For any one or all of these three

reasons, it is urged that we issue a declaratory judgment that the vehicle length limitations in effect in Wisconsin are void, and enter a permanent injunction to restrain further prohibition of twin trailer operation on the interstate highways which traverse the state. For the reasons to follow, we decline to take such action.

II.

Initially, the Court would briefly review the rather complex statutory and administrative scheme by which twin trailer vehicles are now generally prohibited.

Chapter 348 of the Wisconsin Statutes governs the size, weight and load of private and commercial vehicles traveling on all highways in Wisconsin. Section 348.07 provides, *inter alia*, that the over-all length of any single vehicle may not exceed 35 feet and that the over-all length of any combination of two vehicles shall not exceed 55 feet. These limitations are subject to certain exceptions set out in the statute itself, as well as other exceptions to be granted by permit.[3] Section 348.08 concerns vehicle trains, and provides that except by permit no vehicle shall

---

[3]Section 348.07 of the Wisconsin Statutes reads in pertinent part as follows:

"348.07 Length of vehicles

"(1) No person, without a permit therefor, shall operate on a highway any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet, except as otherwise provided in subs. (2) and (2a).

"(2) The following vehicles may be operated without a permit for excessive length if the overall length does not exceed the indicated limitations." [Certain exceptions follow for passenger busses, trolley busses, mobile homes, implements of husbandry temporarily operated on a highway and tour trains. No limitations to vehicles of Wisconsin origin or of Wisconsin residents is set out.]

draw more than one other vehicle where the over-all length of the combination exceeds 55 feet.[4]

Permits for vehicles and loads of excessive size or weight may be granted pursuant to section 348.25 of the Wisconsin Statutes; subparagraph (3) of that section grants power to the Wisconsin Highway Commission to prescribe forms for such permits as are allowed by law, and to impose reasonable conditions upon and to adopt reasonable rules for the issuance of permits and the operations of permittees thereunder.[5] Sections 348.26 and 348.27 denominate the types of permits that may become available and include, *inter alia*, annual permits for trailer-train combinations not greater than 100 feet in length. *See:* § 348.27(6) Wis. Stats.[6]

---

[4]Section 348.08 of the Wisconsin Statutes reads in pertinent part as follows:

"348.08 Vehicle trains

"(1) No person, without a permit therefor shall operate on a highway any motor vehicle drawing or having attached thereto more than one vehicle, except that:

"(a) Two vehicles may, without such permit, be drawn or attached when such vehicles are being transported by the drive-away method in saddle-mount combination and the over-all length of such combination of vehicles does not exceed 55 feet;" [Other exceptions for implements of husbandry and tour trains follow. Again, no limitation to vehicles from the state of Wisconsin is set out.]

[5]Section 348.25(3) of the Wisconsin Statutes reads in full as follows:

"(3) The highway commission shall prescribe forms for applications for all single trip permits the granting of which is authorized by s. 348.26 and for those annual or multiple trip permits the granting of which is authorized by s. 348.27(2) and (4) to (7m). The commission may impose such reasonable conditions prerequisite to the granting of any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of highways. Local officials granting permits may impose such additional reasonable conditions as they deem necessary in view of local conditions."

[6]Section 348.27(6) of the Wisconsin Statutes reads in full as follows:

Pursuant to and in accordance with the authority embodied in section 348.25, the Wisconsin Highway Commission has enacted chapter Hy 30 of the Wisconsin Administrative Code. This chapter establishes limits, procedures and conditions under which the various permits authorized by sections 348.26 and 348.27 may be issued. Trailer-train permits are governed by section Hy 30.14; general limitations on the issuance of trailer-train permits are described at paragraph (3), and include the restrictions that are the challenged in this action:

"Hy 30.14 Trailer-train permits.

* * *

"(3) General limitations on the issuance of trailer-train permits.

* * *

"(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intra-state operation without load of vehicles in tran-

---

"(6) Trailer train permits. Annual permits for the operation of trains consisting of truck tractors, tractors, trailers, semi-trailers or wagons which do not exceed a total length of 100 feet may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. No trailer train permit issued by the local officials for use of highways outside the corporate limits of a city or village is valid until approved by the highway commission. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee."

Other statutory provisions would allow other types of permits to issue including, *inter alia*, single trip permits for oversize of overweight vehicles or loads, trailer trains or mobile homes (§ 348.26 Wis. Stats.), as well as annual or multiple trip permits on a general basis, for industrial interplant operation, for pole, pipe and vehicle transporation, for mobile homes, for metal scrap, for emergency conservation of energy in transport of fuel or milk commodities, and for poles and wood pulp (§ 348.27 Wis. Stats.). The record appears to disclose that the plaintiffs have argued that the permits they seek are permissible under § 348.27(6).

sit from manufacturers or dealer to purchaser or dealer, or for the purpose of repair."

Thus, while § 348.27(6) Wis. Stats. contemplates annual permits for trailer-train vehicles not to exceed 100 feet, the Wisconsin Highway Commission has precluded issuance thereof in all but a limited class of cases by virtue of promulgation of § Hy 30.14(3)(a), Wis. Admin. Code.[7] It seems apparent that this administrative prohibition falls within the discretionary rulemaking power granted by § 348.25(3); the Court must nonetheless determine whether, by adopting this position, the highway commission or any defendant has acted in derrogation [sic] of either the commerce clause in Art I Sec. 8, or the equal protection clause of the fourteenth amendment to the United States Constitution.

II.

It is clear that a state statute or ordinance which discriminates against interstate commerce is an impermissible affront to the commerce clause in Art. I Sec. 8 of the United States Constitution. The discrimination thereby prohibited may be either express or implicit. While the face of a state regulation may speak in a neutral fashion, apparently applicable to interstate and intrastate commerce alike, the regulation is nonetheless unconstitutional where its prac-

---

[7]Attached to the complaint as exhibit B are letters of application for twin trailer permits on interstate highways in Wisconsin, as filed with the Chief Traffic Engineer of the State of Wisconsin on behalf of Raymond Motor Transportation, Inc. and Consolidated Freightways Corporation of Delaware. Each seeks a permit through § 348.27(6) Wis. Stats. and § Hy 30.14 Wis. Admin. Code. Exhibit C to the complaint is a letter from the Chief Traffic Engineer dated April 17, 1975 whereby said applications were denied for failure to comply with § Hy 30.14 (3)(a) Wis. Admin. Code.

tical effect is to discriminate against interstate commercial activities:

> "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce."
>
> *Best & Co. v. Maxwell*, 311 U. S. 454, 455-456 (1940).
>
> ". . . a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of interstate commerce which a State may not establish. A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all states, including the people of the State enacting such statute."
>
> *Minnesota v. Barber*, 136 U. S. 313, 326 (1890).

In point of fact, it is relatively rare that a state "artlessly discloses an avowed purpose to discriminate against interstate goods." *Dean Milk Co. v. City of Madison*, 340 U. S. 349, 354 (1951). The actual impact of the state policy upon interstate commerce is the critical consideration. *See: Baldwin v. G. A. F. Seelig, Inc.*, 294 U. S. 511 (1935); and *Washington State Apple Advertising Commission v. Holshouser*, 408 F. Supp. 857 (3-Judge Ct., E. D. N. C. 1976).

After thorough review of the position of each party the Court concludes that there is neither explicit nor implicit discrimination against interstate commerce through the statutory and administrative scheme in question here. No statute or regulation now at issue expressly focuses its

impact upon interstate trucking operations.[8] In practical effect, it seems apparent that the highways of the state of Wisconsin are controlled without regard to the interstate or intrastate nature of the commerce.[9]

---

[8]The Court would note, for example, that the very administrative regulation under attack in this suit, § Hy 30.13(3)(a) Wis. Admin. Code, expressly states that permits for trailer-trains are to be issued for transport of municipal waste "or for the interstate or intra-state operation" of certain vehicles. The regulation is explicitly nondiscriminatory.

[9]To support their claims that the state of Wisconsin does discriminate against interstate commerce, counsel for the plaintiffs point to language in a statutory authorization for permits for oversize vehicles used for interplant industrial operations. This statute, §348.27(4) reads in full as follows (with emphasis added at the questioned provisions):

> "(4) Industrial interplant permits. The highway commission may issue, *to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state,* annual permits for the operation of such vehicles over designated routes, provided that such permits shall not be issued under this section to agent motor carriers or from plant to state line for vehicles or loads of width exceeding 96 inches upon routes of the national system of interstate and defense highways. If the routes desired to be used by the applicant involve city or village streets or county or town highways, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the highway in question. A separate permit is required for each oversize vehicle to be operated."

The Court finds this statute to lack the significance that plaintiffs' counsel would urge. Exhibit 5 to the deposition of one Robert R. Weaver is an interdepartmental report from Mr. Weaver, Permit Supervisor for the Wisconsin Department of Transportation, to G. T. Lardsness, Chief Maintenance Engineer. The report is a general review of policies regarding issuance of permits for movement of oversize and overweight loads on public highways. The first page of the report expressly indicates that pursuant to Chapter 39 of the Wisconsin Administrative Code, "[p]ermits are issued on the basis of policies established by the statutes and by the [Wisconsin Highway] Commission *without regard to whether the applicant is a resident of Wisconsin or not.*" (emphasis added).

Counsel for the plaintiffs make much of an incident where the Godfrey Conveyor Company, Inc., an Indiana resident was denied a permit for overlength interplant transport of loads of boats. *See:* Deposition of Robert R. Weaver at pp. 8 *et seq.* The Court declines to construe this permit refusal as any indication of a state policy against interstate commerce, however, because the Godfrey letter of application failed to disclose that the applicant was an industrial manufacturer as required by § 348.25(4). *See* Deposition of Wayne Volk, Chief Traffic Engineer, at pp. 45 *et seq.* The applicant thus failed to meet qualifications applicable to every would-be permittee.

The record in this action does not reveal that by means of these facially neutral proscriptions the state of Wisconsin intentionally seeks to isolate local industry or agriculture from foreign competition. *Compare: Minnesota v. Barber, supra; Dean Milk Co. v. Madison, supra; Washington State Apple Ad. Comm'n. v. Holshouser, supra.* For all of the foregoing reasons the Court concludes that no impermissible discrimination against interstate commerce is established by the facts of the instant case.

IV.

Having found no explicit or implicit discrimination, the Court must next consider whether the burden imposed upon interstate commerce outweighs the benefits to the local populus [sic]. As stated in a relatively recent decision of the United States Supreme Court:

> "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit,* 362 U. S. 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."
>
> *Pike v. Bruce Church, Inc.*, 397 U. S. 137, 142 (1970).

In sum, the Court is convinced that all statutory and administrative overweight and overlength permit provisions are worded and applied in an evenhanded fashion.

This Court begins by recognizing that, absent national legislation precluding differing state policies concerning a particular aspect of interstate commerce, a state "may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens." *Sproles v. Binford,* 286 U. S. 374, 390 (1932), *quoting Morris v. Duby,* 274 U. S. 135, 143 (1927).

> "Where traffic control and use of highways are involved and where there is no conflicting federal regulation, great leeway is allowed local authorities, even though the local regulation materially interferes with interstate commerce."
>
> *Railway Express Agency, Inc. v. New York,* 336 U. S. 106, 111 (1949), *citing S. C. Hwy. Dept. v. Barnwell Bros.,* 303 U. S. 177, 187 *et seq.* (1938), and *Maurer v. Hamilton,* 309 U. S. 598 (1940).

The United States Supreme Court has also noted that "there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways." *Southern Pacific Co. v. Arizona,* 325 U. S. 761, 783 (1945). That case also held that, as to matters of highway control, "the state has exceptional scope for the exercise of its regulatory power. . . ." Id. at p. 783. *See too, Bibb v. Navajo Freight Lines,* 359 U. S. 520, 523 (1959). ["The power of the State to regulate the use of its highways is broad and pervasive."]

If related to the subject of highway safety, state statutes and regulations carry "a strong presumption of validity" when subjected to judicial review. *Bibb v. Navajo Freight Lines, supra,* 359 U. S. at p. 524. In the field of safety, evidence must be adduced by those challenging any highway regulation to overcome the presumption of validity to which the law is entitled. *Southern Pacific Co. v. Arizona, supra,* 325 U. S. at p. 796 (Douglas, J., dissenting).

The Court concludes that the anlysis here must begin with a two-tiered approach: we must first consider whether the questioned regulation was within the province of the state legislature and agency then, secondly, whether the means of regulation chosen are reasonably adapted to the ends sought. *See: S. C. Hwy. Dept. v. Barnwell Bros.,* 303 U. S. 177, 190 (1938). In so doing, the Court does not reconsider policy decisions and possible less intrusive state alternatives, as these are matters for the state legislature.[10] *See: S. C. Hwy. Dept. v. Barnwell Bros., supra,* 303 U. S. at p. 190; *Bibb v. Navajo Freight Lines, supra,* 359 U. S. at 524.

---

[10]There appears to be some difference of opinion concerning the question of whether, in the context of this case, this Court can consider if less intrusive alternatives are available to the state legislature. The quotation from Pike v. Bruce Church, Inc. which begins this portion of the opinions seems to indicate that less intrusive alternatives must generally be taken into account with regard to commerce clause questions. *See:* 397 U. S. at p. 142. *See Too:* Dean Milk Co. v. Madison, supra, 340 U. S. at p. 354. However, the cases cited in the test [sic] of the opinion at this footnote clearly states that the presence or absence of less intrusive alternatives is immaterial in a suit of this nature. Because neither Pike v. Bruce Church, Inc. nor Dean Milk Co. v. Madison directly concern highway safety regulations, this Court will rely on those cases that do, and ignore possible less intrusive state alternatives to goals which the question regulations are designed to implement. As a practical matter, no less intrusive alternative to length limitations on commercial vehicles seems possible.

The following conclusions can be derived from application of the foregoing legal standards to the facts of this case:

First, it seems clear that the legislature and highway commission of the state of Wisconsin are within their province as concerns the prohibitions about which the plaintiffs complain. The United States Supreme Court has specifically held that "a state may impose non-discriminatory restrictions with respect to the character of motor vehicles moving in interstate commerce as a safety measure and as a means of securing the economical use of its highways." *S. C. Hwy. Dept. v. Barnwell Bros., supra,* 303 U. S. at p. 190. The plaintiffs have cited and the Court has found no federal legislation especially covering this aspect of interstate commerce, and the state is therefore entitled to prescribe uniform highway regulations such as those now in question. *Sproles v. Binford, supra,* 286 U. S. at p. 390.

Secondly, the Court cannot find that the evidence in the voluminous briefs, depositions and affidavits adduced by or on behalf of the plaintiffs has met the plaintiffs' burden of disspelling the presumption of validity which attaches to these regulations. Simply stated, § 30.14(3)(a) and its companion statutes and regulations have not been shown to be adapted to no permissible safety goal.

As a prime example of the safety considerations at issue here, the Court might focus on the problem of visual impairment posed by the longer twin-trailer combination trucks. It is undisputed that, if the difference in speed between the two vehicles is 10 miles per hour, it would require approximately two-thirds of a second longer for a faster vehicle to pass the added 10 feet of a twin-trailer

combination. *See:* Deposition of Fred J. Myers at pp. 18-19. This period of time would be increased, perhaps dramatically so, if the passing vehicle was traveling at less than the maximum speed permissible and/or if the vehicle being passed was traveling in excess of the applicable maximum speed. It cannot be disputed that drivers of passing vehicles are subjected to additional visual impairment as a result of the greater length of twin-trailer combinations and the time required to pass them; such additional visual impairement might be extreme under adverse weather or traffic conditions.

This Court cannot conclude that prevention of added visual impairment or other similar safety considerations were not within the collective mind of the legislature and administrative bodies responsible for these regulations. Because such factors are indeed legitimate safety concerns, the Court must determine that the proscriptions in question so serve to implement various safety goals.

Under the analysis prescribed by earlier decisions of the United States Supreme Court, this Court would sustain the legislation in question upon the foregoing findings that those promulgating the statutes and regulations were acting within their province and have attempted to implement legitimate safety goals. *See: S. C. Hwy. Dept. v. Barnwell Bros., supra.* More recent Supreme Court authority, however, indicates that further considerations are necessary. Rather than defer to the state upon a finding of a rational basis for its conduct, we must inquire whether the burden the state has imposed upon interstate commerce "is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc., supra,* 397 U. S. at p. 142. More specifically, this Court must consider whether

upon the whole record " 'the total effect of the law as a safety measure in reducing accidents tand casualities is so slight of problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it. . . .' " *Bibb v. Navajo Freight Lines, supra,* 359 U. S. at p. 524 *quoting Southern Pacific Co. v. Arizona, supra,* 325 U. S. at pp. 775-776. The questioned regulations must be upheld unless this is so.

After thorough review of the position of each party and the voluminous record in this proceeding, the Court must and does find that the total effects of the restrictions imposed by § Hwy 30.14(3)(a) are neither slight nor problematical as concerns highway safety. The burdens thereby imposed upon interstate commerce are not unconstitutional in scope or degree.

The United States Supreme Court has on several occasions equated limitation on vehicle size to public safety. The opinions in these cases contain language which is quite broad; they demonstrate that for purposes of judicial review of state highway legislation, size restrictions might be deemed inherently tied to public safety:

> " 'With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles —particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deal specifically with the subject.' "
>
> *Morris v. Duby,* 274 U. S. 135, 144 (1927), quoting *Buck v. Kuykendall,* 267 U. S. 307 (1925).

"In the instant case, there is no discrimination against interstate commerce and the regulations adopted by the State, assuming them to be otherwise valid, fall within the established principle that in matters admitting of diversity of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act. *Minnesota Rate Cases*, 230 U. S. 352, 399, 400.

"We do not find the provision of § 3(c), fixing approximately the same limit of length for individual motor vehicles and for a combination of such vehicles, to be open to objection. If the State saw fit in this way to discourage the use of such trains or combinations on its highways, we know of no constitutional reason why it should not do so."

Sproles v. Binford, 286 U. S. 374, 390 and 392 (1932).

Counsel for the plaintiffs place much reliance upon the decision in *Bibb v. Navajo Freight Lines*, 359 U. S. 520 (1959). Certainly they should do so as the Supreme Court there found an Illinois statute requiring use of a novel type of mudflap on semitrailers to pose an unconstitutional burden on interstate commerce.

This Court finds the *Bibb* case to be factually distinguishable from the circumstances in the case at bar. *Bibb* presented a situation where Illinois was but one state pioneering a new safety device, out of line with the laws of other states in the union, and directly contrary to the laws of the state of Arkansas. The evidence presented at trial actually demonstrated that the new mudflaps possessed no advantages over those in general use; the evi-

dence further showed that adverse effects resulted from these mudflays such that certain dangers of the public were increased.

In the instant case, the restrictions Wisconsin has imposed upon twin trailer combinations are also in effect in at least 12 other of these United States and the District of Columbia. The trucking equipment reqired by Wisconsin law is not incompatible with nor in violation of the laws of any other state. That compliance with Wisconsin regulations imposes added costs upon the plaintiffs is a fact of no material consequence. *Bibb, supra*, 359 U. S. at p. 526.

The Court is of the opinion that, perhaps except under circumstances more compelling than those of the case at bar, the state of Wisconsin is entitled to choose the maximum length of the commercial vehicles using its highways without judicial re-evaluation of that choice. The record reveals that 75-foot twin trailers are in use in several other states. *See, e.g.*, the affidavit of F. J. Wickham (Wyoming), and the affidavit of Ray Lower (Idaho). If the plaintiffs are correct in their assertion that there is little or no significant difference between 55-foot and 65-foot trucks, they might argue that there is no significant difference between 65-foot and 75-foot trucks. Would this Court then be required to command use of 75-foot trucks on the highways of Wisconsin? Such are the problems inherent in judicial efforts to second-guess state highway regulations of this nature.

Certainly the question of whether twin trailer trucks are to be permitted upon state highways is a matter "admitting of diversity of treatment, according to the special

requirements of local conditions." The restrictions at issue here must thus be upheld. *See: Sproles v. Binford, supra.*

V.

The Court next moves to the plaintiffs claims that § Hy 30.14(3)(a) and its companion statutes and regulations serve to deny them equal protection of the law as guaranteed by the fourteenth amendment to the United States Constitution.

With respect to the equal protection argument, it appears that a state's safety regulations are entitled to the same presumption of validity discussed in the foregoing section of this opinion relative to the commerce clause:

> "[W]e are dealing here with state legislation in the field of safety where the propriety of local regulation has long been recognized. See *Atlantic Coast Line R. Co. v. Georgia,* 234 U. S. 280, 291, and cases collected in *California v. Thompson,* 313 U. S. 109, 113-114. Whether the question arises unde rthe Commerce Clause or the Fourteenth Amendment, I think the legisilation is entitled to a presumption of validity."
>
> *Southern Pacific Co. v. Arizona,* 325 U. S. 761, 796 (1945), Douglas, J., dissenting.

Furthermore, when state highway regulations are in question, resolution of a problem of equal protection is to be accomplished by means of practical considerations. That all or some similar evils are not governed by the state is a matter of little consequence. In upholding a New York City traffic regulation concerning advertising

on commercial vehicles, Justice Douglas noted the general deference to which such safety restrictions are entitled:

> "We cannot say that that [legislative] judgment is not an allowable one. Yet if it is, the classification has relation to the purpose for which it is made and does not contain the kind of discrimination against which the Equal Protection Clause affords protection. It is by such practical considerations based on experience rather than by theoretical inconsistencies that the question of equal protection is to be answered. *Patsone v. Pennsylvania,* 232 U. S. 138, 144; *Marcus Brown Co. v. Feldman,* 256 U. S. 170, 198-199; *Metropolitan Co. v. Brownell,* 294 U. S. 580, 585-586. And the fact that New York City sees fit to eliminate from traffic this kind of distraction but does not touch what may be even greater ones in a different category, such as the vivid displays on Times Square, is immaterial. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all. *Central Lumber Co. v. South Dakota,* 226 U. S. 157, 160."
>
> *Railway Express Agency, Inc. v. New York,* 336 U. S. 106, 110 (1949).

In the case at bar, counsel for the plaintiffs have prepared voluminous sets of data to document the scope of the discrimination which they feel is engendered by the Wisconsin limitation on twin trailer combination trucks. Essentially, they argue that the distinctions created between local and foreign industry and between 55-foot and 65-foot trucks are each without sufficient rationale.

Plaintiffs' counsel first argue that the state of Wisconsin has infringed upon a fundamental right of interstate

travel such that only a compelling state interest will justify the distinctions at issue. The Court disagrees.

It appears that all of the authorities cited in support of the assertion that commercial vehicles are entitled to a fundamental right of interstate travel are cases concerning civil liberties of private citizens. *See, e.g., Shapiro v. Thompson,* 394 U. S. 618 (1969). The Court declines to adopt those opinions in the context of the economic regulations here in question. Unless no rational basis can be found to support the legislative discrimination, the statutes and regulations are to be upheld. *See: Railway Express v. New York, supra; Sproles v. Binford, supra,* 286 U. S. at p. 391 *et seq.*

The question of whether there is no rational basis for the distinctions created by the face and implementation of § Hy 30.14(3)(a) merits little discussion beyond that of the foregoing portions of this opinion. Essentially, the Court finds that differences in treatment between local and foreign trucking operations are slight, if existent at all. *See:* part III, *supra.* The distinctions between 55-foot and 65-foot tractor-trailer combinations are supported by adequate safety considerations, as discussed in with respect to the problem of the burden on interstate commerce, part IV *supra.*[11]

When judged by practical rather than technical considerations, the Court must conclude that the differences in treatment about which the plaintiffs complain are not

---

[11]*Compare:* Sproles v. Binford, as quoted in text *supra:* where a state chooses to regulate length limits for individual and combinations of motor vehicles there appears to be "no constitutional reason why it should not do so."

in violation of the equal protection clause of the fourteenth amendment to the United States Constitution.

VI.

After due consideration of the position of each party, as disclosed by the pleadings, briefs and other documents that comprise the written record in this case to date and as supplemented by the oral argument heard, and for the reasons set out in the foregoing memorandum opinion;

THE COURT ORDERS that, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, the trial on the merits of this case is hereby consolidated with the hearing of March 18, 1976, noticed as a hearing on the plaintiffs' motion for preliminary injunctive relief;

THE COURT FINDS that the administrative regulation at issue here, § Hy 30.14(3)(a) Wis. Admin. Code, constitutes neither an impermissible discrimination against interstate commerce nor an undue burden upon interstate commerce, all such that no violation of the commerce clause of Art. I Sec. 8 of the United States Constitution is perceived;

THE COURT FURTHER FINDS that, both on its face and as applied, § Hy 30.14(3)(a) Wis. Admin. Code creates no distinction without a rational basis such that no violation of equal protection clause of the fourteenth amendment to the United States Constitution is demonstrated;

THE COURT THEREFORE ORDERS that the requests for preliminary and permanent injunctive relief and for

declaratory judgment, as filed on behalf of the plaintiffs, must be and are hereby DENIED.

This case is DISMISSED without taxation of costs and attorneys' fees to any party.

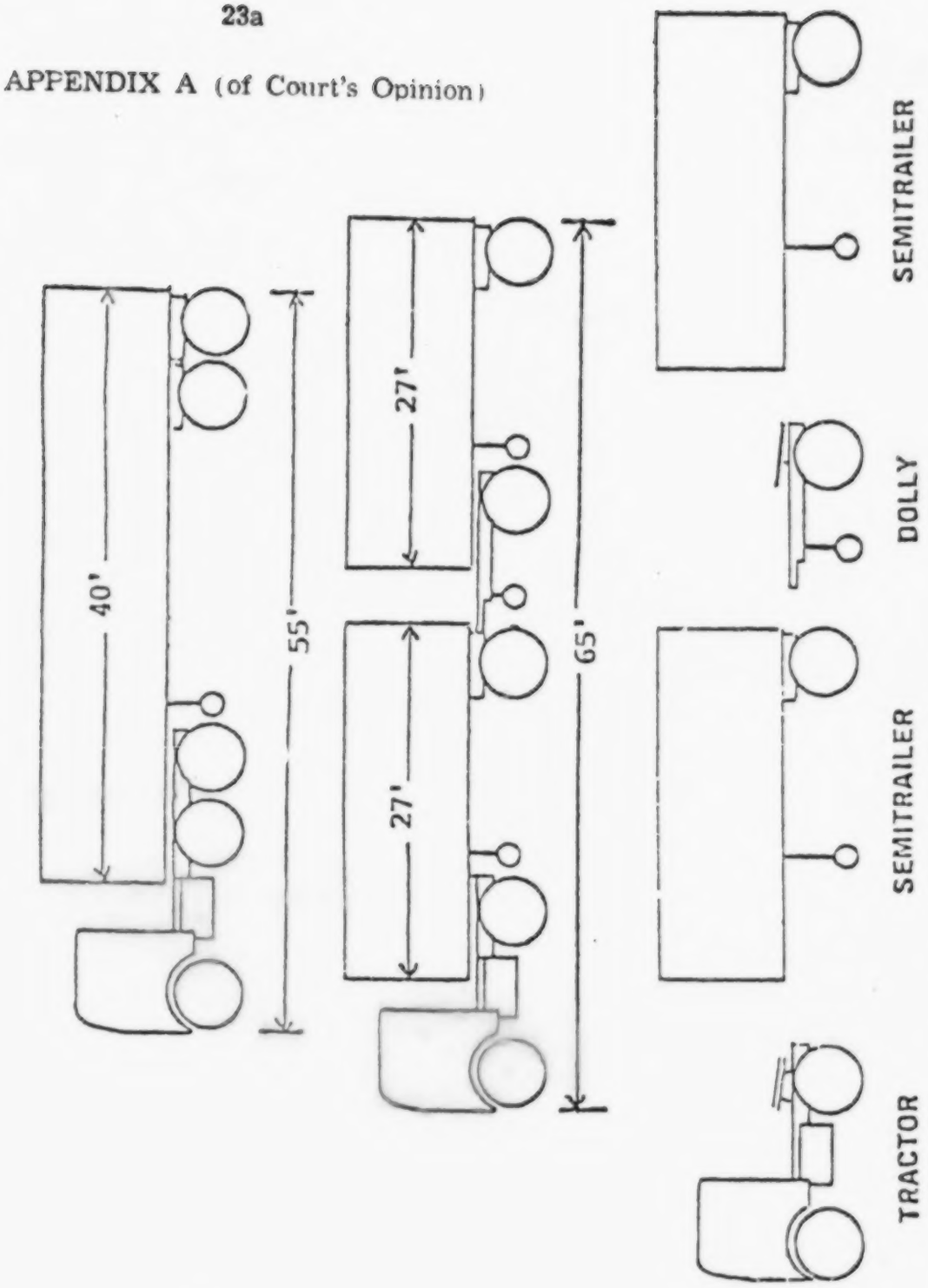
So ordered this 13th day of August, 1976.

/s/ ROBERT A. SPRECHER
Robert A. Sprecher
Seventh Circuit Court of
Appeals Judge

/s/ JAMES E. DOYLE
James E. Doyle
United States District Judge

/s/ ROBERT W. WARREN
Robert W. Warren
United States District Judge

APPENDIX A (of Court's Opinion)



APPENDIX B

NOTICE OF APPEAL

[Filed September 29, 1976]

Case No. 75-C-172

(Caption Omitted)

Please take notice that plaintiffs, Raymond Motor Transportation, Inc. and Consolidated Freightways Corportion of Delaware hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on August 13, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ JACK R. DEWITT
DEWITT, MCANDREWS
& PORTER, S.C.
121 South Pinckney Street
P. O. Box 2509
Madison, Wisconsin 53701

ALBERT HARRIMAN, Assistant Attorney General for the State of Wisconsin, Attorney for defendants in this case hereby acknowledges personal service of a copy of the above Notice of Appeal this 27th day of September 1976.

/s/ ALBERT HARRIMAN, Assistant Attorney General
Attorney for the defendants

APPENDIX C

STATUTES

348.07 LENGTH OF VEHICLES. (1) No person, without a permit therefor, shall operate on a highway any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet, except as otherwise provided in subs. (2) and (2a).

(2) The following vehicles may be operated without a permit for excessive length if the over-all length does not exceed the indicated limitations:

. . . (d) 60 feet for a combination of mobile home and towing vehicle, except that no mobile home and towing vehicle having a combined length in excess of 50 feet shall be operated during the hours of 12 m. to 12 p.m. on Sundays, New Year's, Memorial, Independence, Labor, Thanksgiving and Christmas days;

(e) No limitation for implements of husbandry temporarily operated upon a highway.

348.08 VEHICLE TRAINS. (1) No person, without a permit therefor shall operate on a highway any motor vehicle drawing or having attached thereto more than one vehicle. . . .

348.175 SEASONAL OPERATION OF VEHICLES HAULING PEELED OR UNPEELED FOREST PRODUCTS CUT CROSSWISE. The transportation of peeled or unpeeled forest products cut crosswise in excess of gross weight limitations under s. 348.15 shall be permitted during the winter months when the highways are so frozen that no damage may result thereto by reason of such transportation. If at any time any person is so transporting such products upon a class

"A" highway in such frozen condition then he may likewise use a class "B" highway without other limitation, except that chains and other traction devices are prohibited on class "A" h ghways but such chains and devices may be used in cas s of necessity. . . .

348.19(1) . . . (b) Any other provision of the statutes notwithstanding, a vehicle transporting peeled or unpeeled forest products cut crosswise shall not be required to proceed to a scale more than one mile from the point of apprehension if the estimated gross weight of the vehicle does not exceed the lawful limit.

* * *

348.25 GENERAL PROVISIONS RELATING TO PERMITS FOR VEHICLES AND LOADS OF EXCESSIVE SIZE AND WEIGHT. (1) No person shall operate a vehicle on or transport an article over a highway without first obtaining a permit therefor as provided in s. 348.26 or 348.27 if such vehicle or article exceeds the maximum limitations on size, weight or projection of load imposed by this chater.

(2) Vehicles or articles transported under permit are exempt from the restrictions and limitations imposed by this chapter on size, weight and load to the extent stated in the permit. Any person who violates a condition of a permit under which he is operating is subject to the same penalties as would be applicable if he were operating without a permit.

(3) The highway commission shall prescribe forms for applications for all single trip permits the granting of which is authorized by s. 348.26 and for those annual or multiple trip permits the granting of which is authorized by s. 348.27(2) and (4) to (7m). The commission may impose such reasonable conditions prerequisite to the granting of

any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways. Local officials granting permits may impose such additional reasonable conditions as they deem necessary in view of local conditions.

(4) Except as provided under s. 348.27(7m), permits shall be issued only for the transporting of a single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations, except that:

(a) A permit may be issued for the transportation of property consisting of more than one article, some or all of which exceeds statutory size limitations, provided statutory gross weight limitations are not thereby exceeded and provided the additional articles transported do not cause the vehicle and load to exceed statutory size limitations in any way in which such limitations would not be exceeded by the single article.

(b) A single trip permit may be issued for the transporation of a load of implements of husbandry, consisting of not more than 2 articles, when the load does not exceed the length requirement in s. 348.07 by more than 5 feet.

348.26 SINGLE TRIP PERMITS. (1) APPLICATIONS. All applications for single trip permits for the movement of oversize or overweight vehicles or loads shall be made upon the form prescribed by the highway commission and shall be made to the officer or agency designated by this section as having authority to issue the particular permit desired for the use of the particular highway in question.

(2) PERMITS FOR OVERSIZE OR OVERWEIGHT VEHICLES OR LOADS. Except as provided in sub. (4), single trip permits for oversize or overweight vehicles or loads may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. Such local officials also may issue such single trip permits for use of state trunk highways within the county or municipality which they represent. Every single trip permit shall designate the route to be used by the permittee. Whenever the officer or agency issuing such permits deems it necessary to have a traffic officer accompany the vehicle through his municipality or county, a reasonable charge for such traffic officer's services shall be paid by the permittee.

(3) TRAILER TRAIN PERMITS. The highway commission and those local officials who are authorized to issue permits pursuant to sub. (2) also are authorized to issue single trip permits for the operation of trains consisting of truck-tractors, tractors, trailers, semitrailers or wagons on highways under their jurisdiction, except that no trailer train permit issued by a local official for use of a highway outside the corporate limits of a city or village is valid until approved by the highway commission. No permit shall be issued for any train exceeding 100 feet in total length. Every permit issued pursuant to this subsection shall designate the route to be used by the permitee.

(4) MOBILE HOME PERMITS. Single trip permits for the movement of oversize moblie homes may be issued only by the highway commission, regardless of the highways to be used. Every such permit shall designate the route to be used by the permittee and shall authorize use of the

highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

348.27 ANNUAL OF MULTIPLE TRIP PERMITS. (1) APPLICATIONS. All applications for annual or multiple trip permits for the movement of oversize or overweight vehicles or loads shall be made to the officer or agency designated by this section as having authority to issue the particular permit desired for use of the particular highway in question. All applications under subs. (2) and (4) to (7m) shall be made upon forms prescribed by the highway commision.

(2) ANNUAL PERMITS. Annual permits for oversize or overweight vehicles or loads may be issued by the highway commission, regardless of the highways involved. A separate permit is required for each oversize or overweight vehicle to be operated upon a highway.

. . . (4) INDUSTRIAL INTERPLANT PERMITS. The highway commission may issue, to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state, annual permits for the operation of such vehicles over designated routes, provided that such permit shall not be issued under this section to agent motor carriers or from plant to state line for vehicles or loads of width exceeding 96 inches upon routes of the national system of interstate and defense highways. If the routes desired to be used by the applicant involve city or village streets or county or town highways, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the highway in question. A separate permit is required for each oversize vehicle to be operated.

(5) POLE, PIPE AND VEHICLE TRANSPORTATION PERMITS. The highway commission may issue an annual permit to pipeline companies or operators or public service corporations for transportation of poles, pipe, girders and similar materials used in its business and to auto carriers operating "haulaways" specially constructed to transport motor vehicles and which exceed the maximum limitations on length of vehicle and load imposed by this chapter. Such permits issued to auto carriers shall limit the length of vehicle and load to a maximum of 10 feet in excess of the limitations in s. 348.07(1) and shall be valid only on a class "A" highway as defined in s. 348.15(1)(b).

(6) TRAILER TRAIN PERMITS. Annual permits for the operation of trains consisting of truck tractors, tractors, trailers, semitrailers or wagons which do not exceed a total length of 100 feet may be issued by the highway commission for use of the state trunk highways and by the officer in charge of maintenance of the highway to be used in the case of other highways. No trailer train permit issued by the local officials for use of highways outside the corporate limits of a city or village is valid until approved by the highway commission. Every permit issued pursuant to this subsection shall designate the route to be used by the permittee.

(7) MOBILE HOME PERMITS. The highway commission may issue annual statewide permits to licensed mobile home transport companies and to licensed mobile home manufacturers and dealers authorizing them to transport oversize mobile homes over any of the highways of the state in the ordinary course of their business. Every such permit shall authorize use of the highways only between sun-

rise and sunset on days other than Saturdays, Sundays and holidays.

. . . (8) EMERGENCY ENERGY CONSERVATION PERMITS. During an energy emergency, the highway commission may waive the divisible load limitation of s. 348.25(4) and issue permits valid for a period not to exceed 30 days for overweight vehicles carrying energy resources or fuel or milk commodities designated by the governor or his designee, regardless of the highways involved, to conserve energy. Such permits may only allow weights not more than 10% greater than the gross axle and axle combination weight limitations, and not more than 15% greater than the gross vehicle weight limitations under ss. 348.15 and 348.16. No permit issued under this subsection is valid unless the overweight vehicle is registered under ch. 341 for the maximum gross weight allowed by the permit and the department of transportation has been paid a permit fee of $10 per 1,000 pounds or fraction thereof for the amount by which such maximum gross weight exceeds 73,000 pounds. Nothing in this subsection shall be construed to permit the highway commission to waive the requirements of s. 348.07.

(9) POLE LENGTH AND PULPWOOD PERMIT. The highway commission may issue annual permits for the transportation on a vehicle combination consisting of a truck and full trailer of loads of pole length and pulpwood exceeding statutory length or weight limitations over any class of highway for a distance not to exceed 3 miles from the Michigan-Wisconsin state line, provided that if the roads desired to be used by the applicants involve streets or highways other than those within the state trunk highway system, the application shall be accompanied by a written

statement of route approval by the officer in charge of maintenance of such other highway.

ADMINISTRATIVE REGULATIONS

Hy 30.01 General. (1) Pursuant to authority contained in section 348.25(3), Wis. Stats., the commission does hereby establish limits, procedures and conditions under which the various permits authorized by sections 348.26 and 348.27, Wis. Stats., may be issued.

(2) Permits for the movement over state trunk highways of vehicles and loads exceeding limits or conditions established hereby shall be issued only on specific authorization by the commission.

(3) In the interest of uniformity and brevity, the commission hereby establishes the following conditions relating to more than one type of permit, which conditions become effective by reference thereto in the section of the rules relating to the specific type of permit:

(a) *Application requirements.* 1. Applications shall be made to the issuing authority on forms prescribe by the state of Wisconsin, department of transportation, division of highways, hereinafter known as the division of highways, which will be furnished to the applicant upon request.

2. Requests for amendments to permits shall be submitted in writing to the authority issuing the permit.

(b) *Authorization to issue permits.* The authorization for the issuance of permits shall be as stated in the sections relating to each specific type of permit.

(c) *General limitations on issuance of permits.* 1. Except for general permits (Hy 30.06), industrial interplant permits (Hy 30.08), pole and pipe transporation permits (Hy 30.10), vehicle transportation permits (Hy 30.12) and double bottom milk truck permits (Hy 30.18), permits shall not be issued nor valid for the transporting of loads or articles which could reasonably be divided in such a manner as to allow transporting of the loads or articles in 2 or more loads which would not exceed statutory size and weight limits, nor shall permits be issued or valid for the transporting of more than one article if the vehicle and load exceed statutory weight limits. (This does not prohibit the transporting of necessary blocking for a load, nor the transporting of such necessary blocking on the otherwise empty vehicle to and from the origin or destination of the load, but it does prohibit, among other things, the addition of an extra bucket, boom section, and so forth to a load being transported under a permit issued for an overweight vehicle and load.)

2. Except as specifically authorized in sections Hy 30.02, Hy 30.04, Hy 30.06, Hy 30.14 and Hy 30.18, permits shall not authorize the operation of more than 2 vehicles in combination.

3. Permits shall be issued and valid only for vehicles equipped with pneumatic tires.

(d) *Insurance and liability conditions.* 1. In applying for and accepting a permit, the permittee agrees to pay any claim for any bodily injury or property damage for which he is legally responsible resulting from operations under the permit and to save the state and its suodivisions

harmless from any claim which may arise from operations over public highways under the permit.

* * *

(e) *General conditions.* 1. The maximum size limitations and the maximum axle, axle combination and vehicle weights authorized by a permit shall not be exceeded. A divisible load, consisting of articles none of which exceeds statutory size limits, may not be transported under a permit.

2. Permits issued by the commission authorize the use of any of the highways of the state, subject to the limitations stated in the permit.

* * *

Hy 30.02 Single trip permits. (1) APPLICATION REQUIREMENTS. The application requirements for single trip permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a), and the following:

* * *

(2) *Authorization to Issue Single Trip Permits.* The officer or agency authorized by section 348.26, Wis. Stats., may issue single trip permits for operation over specific classes of highways as provided in said section. Single trip permits for transportation over state trunk highways may be issued as follows:

* * *

3(b) Single trip permits may be issued for the transporation of a vehicle combination, consisting of 3 empty vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair. The towing vehicle shall be a truck-tractor or a road tractor.

* * *

Hy 30.04 Annual permits. (1) APPLICATION REQUIREMENT. The application requirements for annual permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a) 1 and the following:

(a) Annual permit applications shall be directed to the Chief Traffic Engineer, Division of Highways, Madison, Wisconsin, 53702.

(2) AUTHORIZATION TO ISSUE ANNUAL PERMITS. The chief traffic engineer or his authorized representatives may issue annual permits subject to such size, weight and other limitations as the commission may, from time to time, prescribe.

(3) GENERAL LIMITATIONS ON ISSUANCE OF ANNUAL PERMITS. The issuance of annual permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01(3)(c) 1, 2 and 3, and the following:

(a) Annual permits shall not be issued for house trailers, mobile homes, travel trailers or camper trailers.

(b) Annual perimts may be issued for self-propelled carry-all scraper, provided that no single axle may exceed 35,000 pounds.

* * *

Hy 30.06 General permits. (1) APPLICATION REQUIREMENTS The application requirements for general permits shall be as set forth in subsection Hy 30.01(3)(a), Wis. Adm. Code, and the following:

* * *

(2) AUTHORIZATION TO ISSUE GENERAL PERMITS. (a) The officer of agency authorized by section 348.27, Wis. Stats., may issue general permits for operation on highways for the maintenance of which the officer or agency is responsible.

* * *

3(b) General permits may be issued for loads which exceed statutory size or weight limitations or both.

* * *

(d) General permits may be issued for the operation of a vehicle combination consisting of three empty vehicles in transit from manufacturer or dealer to purchaser or dealer or for the purpose of repair. The towing vehicle shall be a truck-tractor or a road tractor.

* * *

Hy 30.08 Industrial interplant permits. (1) *Application requirements.* The application requirements for industrial interplant permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a), and the following:

* * *

(3) GENERAL LIMITATIONS ON ISSUANCE OF INDUSTRIAL INTERPLANT PERMITS. The issuance of industrial interplant permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01(3)(c) 2, 3 and 4, and the following:

* * *

5(a) The size limitations on vehicles which may be operated on a public highway under an industrial interplant permit will be determined in each particular instance by the commission.

* * *

Hy 30.10 Pole and pipe transportation permits. (1) APPLICATION REQUIREMENTS. The application requirements for pole and pipe transportation permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a) 1, and the following:

* * *

(2) AUTHORIZATION TO ISSUE POLE AND PIPE TRANSPORTATION PERMITS. The chief traffic engineer or his authorized representatives may issue pole and pipe transportation permits subject to such size and other limitations as the commission may, from time to time, prescribe.

* * *

Hy 30.12 Vehicle transportation permits. (1) APPLICATION REQUIREMENTS. The application requirements for vehicle transporting permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a) 1, and the following:

* * *

(2) AUTHORIZATION TO ISSUE VEHICLE TRANSPORTATION PERMITS. The chief traffic engineer or his authorized representatives may issue vehicle transportation permits subject to such size and other limitations as the commission may, from time to time, prescribe.

* * *

(3) GENERAL LIMITATIONS ON ISSUANCE OF VEHICLE TRANSPORTATION PERMITS. The issuance of vehicle transportation permits shall be subject to the general limitations

stated in Wis. Adm. Code sections Hy 30.01(3)(c) 2, 3 and 4, and the following:

(a) Vehicle transportation permits will be issued only to auto carriers operating "haulaways" specially constructed to transport motor vehicles and for vehicles which exceed the maximum limitations on length of vehicle and load imposed by chapter 348, Wis. Stats.

* * *

Hy 30.14 Trailer-train permits. (1) APPLICATION REQUIREMENTS. The application requirements for trailer-train permits shall be as set forth in Wis. Adm. Code section Hy 30.01(3)(a), and the following:

(a) Applications for trailer-train permits for movement over state trunk highways shall be directed to the Chief Traffic Engineer, Division of Highways, Madison, Wisconsin, 53702.

(b) Application for trailer-train permits for movement over highways other than state trunk highways shall be made to the officer in charge of the maintenance of the highway to be used.

(2) AUTHORIZATION TO ISSUE TRAILER TRAIN PERMITS. (a) The officer or agency authorized by section 348.27(6), Wis. Stats., may issue trailer-train permits for operation on highways for the maintenance of which the officer or agency is responsible.

(b) The chief traffic engineer or his authorized representatives may issue trailer-train permits for movement on the state trunk highway system, subject to such size and other limitations as the commission may, from time to time, prescribe.

(c) Trailer-train permits issued by local authorities for transportation over highways outside of the corporate limits of cities and villages shall not be valid until approved by the commission or its authorized representatives. The chief traffic engineer and his authorized representatives may approve trailer-train permits issued by local authorities.

(3) GENERAL LIMITATIONS ON THE ISSUANCE OF TRAILER-TRAIN PERMITS. The issuance of trailer-train permits shall be subject to the general limitations stated in Wis. Adm. Code sections Hy 30.01(3)(c) 2 and 4, and the following:

(a) Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intra-state operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair.

(b) Trailer-train permits shall not be issued for wagons used in connection with seasonal agricultural industries.

(4) INSURANCE AND LIABILITY CONDITIONS. Trailer-train permits are issued subject to the insurance and liability conditions set forth in Wis. Adm. Code sections Hy 30.01(3)(d) 1, 2, 3, 4, 5 and 6, and the following:

(a) The permittee will be required to certify and may be required to present satisfactory written evidence that at least the following insurance coverage or in lieu thereof a bond in a form satisfactory to the authority issuing the permit, is or will be in full force and effect on the vehicles

and load designated in the permit while operating on the public highway:

Bodily injury liability—each person	$100,000
Bodily injury liability—each accident	300,000
Property damage liability—each accident	100,000

(5) GENERAL CONDITIONS. Trailer-train permits are issued subject to the general conditions set forth in Wis. Adm. Code sections Hy 30.01(3)(e) 1, 3, 4, 5, 8, 9, 10, 11, 12, 17, 20, 22, 23, 24, 25, 26, 27, and 30, and the following:

(a) A trailer-train permit issued by the division of highways for a movement which is partly on the state highway system and partly on other classes of highways, is valid only on state highways.

(b) The total length of trains consisting of truck-tractors, tractors, trailers, semitrailers, or wagons operating under the terms of a trailer-train permit and the number of vehicles in such a trailer-train determined by the authority issuing the permit shall not be exceeded, and in no event shall the overall length of the train of vehicles exceed 100 feet. The height and width of such vehicles shall not exceed statutory limits.

(c) Trailer-trains operating under a permit shall carry in addition to any lights prescribed by Wisconsin Statutes and by the valid ordinances of the municipalities in which they are operated, a red light or approved reflective signal on each side of each trailer so placed as to make the trailer visible from all sides.

(d) A trailer-train permit is valid only for the vehicle(s) described upon the application and permit.